

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0630

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SHANE BUCHER,

Plaintiff and Appellant,

v.

PATRICK HAROLD HUGHES,

Defendant and Appellee.

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FILED

FEB 12 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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**MOTION TO WITHDRAW AS LIMITED COUNSEL OF RECORD**

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Joslyn Hunt, Chief Appellate Defender, respectfully requests an Order from this Court allowing the Office of the Appellate Defender (OAD) to withdraw. OAD filed a limited notice of appearance, stating the appearance was limited to “filing a motion to dismiss the appeal and for any further briefing on issues stemming from the criminal cause.” The appearance was not for “any other purpose, such as collection of restitution, which is solely a civil matter for which the ADO services are not available.” (*See* Notice of Appearance, Ex. 1.)

In denying OAD’s motion to dismiss, this Court stated that the district court transformed the unpaid restitution amount into a civil judgment. Under those circumstances, this Court concluded “Bucher has standing to appeal the amount of

Motion to Withdraw as Limited Counsel of Record

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the civil judgment entered in his favor pursuant to § 46-18-249, MCA.” Bucher, however, lacked standing to appeal the district court’s denial of the State’s petition to revoke Hughes’s suspended sentence. This Court did not interpret Bucher’s appeal as an effort to challenge the district court’s decision regarding Hughes’s suspended sentence. (*See Order, Ex. 2.*)

Based on this Court’s analysis, the appeal before the Court is now a civil matter between two private parties targeting the amount entered as a civil judgment. Accordingly, OAD moves to withdraw as limited counsel of record, given that civil representation is outside the scope of representation provided for under Mont. Code Ann. § 47-1-104.

Bucher’s counsel has been contacted regarding this motion and does not object.

Respectfully submitted this 1<sup>st</sup> day of February, 2010.

OFFICE OF THE STATE PUBLIC DEFENDER  
Appellate Defender Office  
139 N. Last Chance Gulch  
P.O. Box 200145  
Helena, MT 59620-0145

By: Joselyn Hunt  
JOSLYN HUNT  
Chief Appellate Defender

Motion to Withdraw as Limited Counsel of Record  
Page 2 of 3

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing

Motion to Withdraw as Limited Counsel of Record to be mailed to:

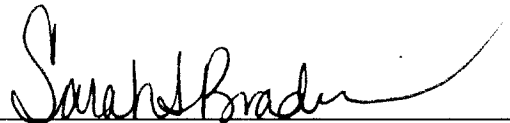
LAWRENCE A. ANDERSON  
Attorney at Law, P.C.  
P.O. Box 2608  
Great Falls, MT 59403-2608

SHARI M. GIANARELLI  
Attorney at Law  
310 South Main, Suite B  
Conrad, MT 59425

PATRICK HUGHES  
P.O. Box 961  
Shelby, MT 59474

DATED: \_\_\_\_\_

2/1/2010

  
\_\_\_\_\_

# EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0630

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SHANE BUCHER,

Plaintiff and Appellant,

v.

PATRICK HAROLD HUGHES,

Defendant and Appellee.

---

**FILED**

DEC 31 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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**NOTICE OF APPEARANCE**

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To: Ed Smith, Clerk of Supreme Court

Please note and enter the appearance of the Office of State Public Defender, Appellate Defender Office, P.O. Box 200145, Helena, Montana, as appointed counsel for the Defendant Patrick Harold Hughes (Hughes).

The Appellate Defender Office filed a Motion to Withdraw as Counsel of Record on December 15, 2009 in this case. The ADO did so under the impression that the appeal was a civil matter. However, upon further research and investigation, it appears that the appeal is not one concerning collection on a restitution matter. Rather, it appears that no civil judgment was entered and the "civil" notice of appeal was based on a judgment targeting a criminal judgment. Consequently, the ADO enters this notice of appearance for the limited purpose of filing a motion to dismiss the appeal and for any further briefing on issues

stemming from the criminal cause. The ADO notes that while the Notice of Appeal and the transcript are captioned as a civil matter, Toole County Cause No. DC-01-028, the cause was actually a criminal case, *State of Montana v. Patrick Harold Hughes*, and the judgment appealed from was an order denying the State's petition to revoke probation. The ADO does not enter this notice of appearance for any other purpose, such as collection of restitution, which is solely a civil matter for which the ADO services are not available.

Respectfully submitted this 31<sup>st</sup> day of December, 2009.

OFFICE OF THE STATE PUBLIC DEFENDER  
Appellate Defender Office  
139 N. Last Chance Gulch  
P.O. Box 200145  
Helena, MT 59620-0145

By: Joslyn Hunt  
JOSLYN HUNT  
Chief Appellate Defender

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing

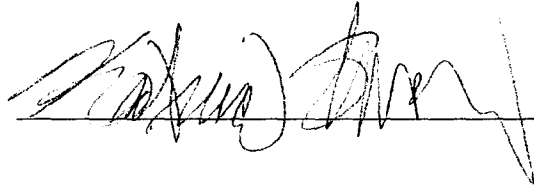
Notice of Appearance to be mailed to:

LAWRENCE A. ANDERSON  
Attorney at Law, P.C.  
P.O. Box 2608  
Great Falls, MT 59403-2608

SHARI M. GIANARELLI  
Attorney at Law  
310 South Main, Suite B  
Conrad, MT 59425

PATRICK HUGHES  
P.O. Box 961  
Shelby, MT 59474

DATED: December 31, 2009

A handwritten signature in black ink, appearing to be "L. A. Anderson", is written over a horizontal line.

# EXHIBIT 2



FILED

February 3 2010

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0630

FILED

FEB - 3 2010

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA  
ORDER

SHANE BUCHER,

Plaintiff and Appellant,

v.

PATRICK HAROLD HUGHES,

Defendant and Appellee.

Appellant Shane Bucher (Bucher) appeals a judgment entered by the Ninth Judicial District Court, Toole County, in that court's Cause No. DC-01-028. Appellee Patrick Harold Hughes (Hughes) has moved to dismiss the appeal on grounds that Bucher lacks standing to appeal the judgment. Bucher has filed a response objecting to the motion to dismiss the appeal.

As Hughes points out, the District Court's Cause Number DC-01-028 is a criminal action, *State of Montana v. Patrick Harold Hughes*. The District Court sentenced Hughes in 2003 to a 6-year commitment to the custody of the Department of Corrections, all of which it suspended, and ordered Hughes to pay Bucher restitution.

The State of Montana petitioned in 2009 to revoke Hughes's suspended sentence. The District Court denied that motion and, pursuant to § 46-18-249, MCA, entered a civil judgment in the amount of \$29,463.70 against Hughes and in favor of Bucher, for restitution not yet paid. Although the civil judgment entered on that order was filed under the District Court's Cause No. DC-01-028, the civil judgment is entitled as indicated above. Bucher appeals from the District Court's failure to include interest on the civil judgment.

Section 46-18-249, MCA, allows a victim of a crime to treat restitution as a civil judgment against the offender and collect the restitution as a civil judgment. Here the District Court has transformed the unpaid restitution amount into a civil judgment. Under

these circumstances, we conclude Bucher has standing to appeal the amount of the civil judgment entered in his favor pursuant to § 46-18-249, MCA.

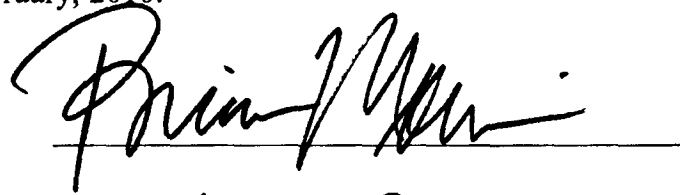

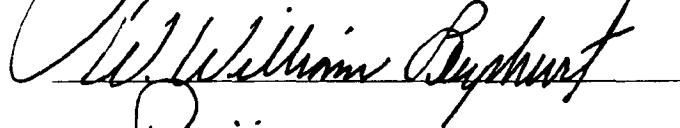

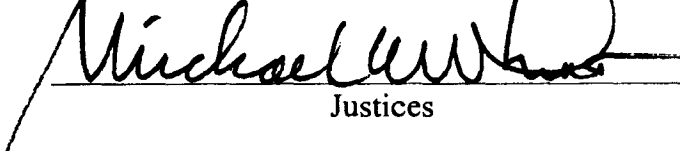
Bucher lacks standing to appeal the District Court's denial of the State's petition to revoke Hughes's suspended sentence. We do not interpret Bucher's appeal as an effort to challenge the District Court's decision regarding Hughes's suspended sentence.

THEREFORE,

IT IS ORDERED that Hughes's motion to dismiss this appeal is DENIED.

The Clerk is directed to provide copies of this Order to all counsel of record.

DATED this 3<sup>rd</sup> day of February, 2010.

  
  
  
  
  
Justices